IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
WESTERN DIVISION

HENRY J. WESTON,

Plaintiff

v. **Civil Action No. 3:93CV14-D-O**

BLUE MOUNTAIN PRODUCTION COMPANY

Defendant

MEMORANDUM OPINION

This cause is before the undersigned on defendant Blue Mountain Production Company's ("Blue Mountain") motion for summary judgment. The plaintiff has responded to the motion and the defendant filed its proper rebuttal. Plaintiff Henry J. Weston alleges that the defendant discriminatorily terminated him because of his race in violation of 42 U.S.C. § 1981. After consideration of the record in this cause, the court is of the opinion that summary judgment in favor of the defendant is not appropriate and the motion will be denied.

FACTUAL BACKGROUND[1]

Plaintiff was hired at Blue Mountain on January 9, 1991, to fill jugs with cat litter. Blue Mountain, located in Blue Mountain, Mississippi, produces, packages and distributes absorbent or cat litter for use in cat litter boxes. Plaintiff had no contract for employment for a definitive period of time and was an

[1] The facts presented below are taken from the record, including briefs, affidavits and deposition excerpts, submitted by both parties.

employee-at-will of the defendant. Upon his employment, plaintiff was advised of Blue Mountain policies and given a Quality Operators Handbook.

In April of 1991, Weston was promoted to a team leader position of the day shift. Clay Meeks, a Blue Mountain Production Company Manager, appointed him to the position. The plaintiff later requested and received a transfer back to his line job. In any event, with the exception of some minor problems which the defendant admits were not the basis of his termination,[2] Weston enjoyed a positive working relationship with Blue Mountain until the night of January 24, 1992.

On the night of January 24, 1992, Meeks was meeting with Steven Prince, another Blue Mountain employee, in an office near the line. Apparently, prior to the meeting, there had been some discussion among Blue Mountain employees about walking off the line (i.e. leaving work). Weston claims that John Myers, the team leader for plaintiff's line and his immediate supervisor, informed him that Prince was telling management that Weston had tried to get

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[2] The defendant submitted that there were several problems with Weston's work performance and conduct. Specifically, the defendant mentions a night when the plaintiff had indicated he would stay late at work and clean up, but left without performing the work. The defendant also claims that plaintiff was reprimanded for requesting sexual favors from a female employee in exchange for making her job easier. And finally, the defendant asserts that, while working as a team leader, the plaintiff was counselled about "hollering and screaming" at his team members and others.

Because the defendant admits that these events were not the reasons for plaintiff's termination, the court did not consider this evidence in ruling on the present motion.

employees to walk off the line.[3] The plaintiff contends that Myers advised him to enter the meeting and defend himself against the accusations. The plaintiff entered the office and confronted Prince in the presence of Meeks. The defendant claims that Weston "burst into the office and accused Mr. Prince of telling lies about the plaintiff." The defendant further submits that plaintiff "threw his hat down, stood over Mr. Prince such that he could not rise from his chair, and called him a 'lying bastard'." Plaintiff denies that he used foul language, and simply claims that he entered the meeting calmly to defend himself, as his supervisor had advised. Plaintiff was eventually persuaded to leave the office and subsequently told to return on Monday, January 27, 1992, for a meeting with Meeks, Myers, and Howell Duncan, the plant manager.

After the incident on January 24, Meeks met with Danny Criswell and John Beale, other Blue Mountain employees, to try and evaluate the situation. Apparently, both agreed that Prince, not Weston, had encouraged line members to walk. At any rate, on January 27, prior to plaintiff's scheduled meeting with management, Meeks recommended to Duncan that both Prince and Weston be fired. The recommendation in regard to the plaintiff was based on his verbal abuse of Prince.

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[3] Meeks does not dispute that Prince was claiming that plaintiff was attempting to persuade employees to walk off the line.

On Monday, January 27, 1992, at the scheduled meeting with Meeks, Myers and Duncan, the plaintiff was terminated. The defendant claims that he was terminated solely because of his verbal abuse of Prince,[4] who was also terminated. The plaintiff contends that his termination was racially motivated. Weston claims that white employees who have directed abusive language at a fellow employee in a like fashion received a much lesser discipline, namely demotion. He filed the present action on January 26, 1992, alleging racial discrimination in violation of 42 U.S.C. § 1981. The single issue before this court is whether, had the plaintiff been white, he would have been discharged for his verbal abuse of a fellow employee.

Summary Judgment Standard

Summary judgment is appropriate "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine

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[4] Weston's termination letter states that "DUE TO YOUR VERBAL ABUSE DIRECTED AT A FELLOW TEAM MEMBER AND YOUR FAILURE TO WORK AS A TEAM MEMBER, YOUR EMPLOYMENT WITH BLUE MOUNTAIN PRODUCTION COMPANY IS TERMINATED EFFECTIVE TODAY, JANUARY 27, 1992."

The termination was essentially and solely, argues the defendant, for violating Blue Mountain's Quality Operator's Handbook, which states in part:

> "Any attempt by a team member to disrupt the performance of our team efforts will not be tolerated" and "improper verbal conduct that interferes with the quality operators work performances or creating an intimidating, hostile or offensive work environment will not be tolerated."

issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed.R.Civ.P. 56(c). The party seeking summary judgment carries the burden of demonstrating that there is an absence of evidence to support the non-moving party's case. Celotex Corp. v. Catrett, 477 U.S. 317, 325, 106 S. Ct. 2548, 2553, 91 L.Ed.2d 265 (1986). After a proper motion for summary judgment is made, the non-movant must set forth specific facts showing that there is a genuine issue for trial. Hanks v. Transcontinental Gas Pipe Line Corp., 953 F.2d 996, 997 (5th Cir. 1992). If the non-movant sets forth specific facts in support of allegations essential to his claim, a genuine issue is presented. Celotex, 477 U.S. at 327, 106 S. Ct. at 2554. "Where the record, taken as a whole, could not lead a rational trier of fact to find for the non-moving party, there is no genuine issue for trial." Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 587, 106 S. Ct. 1348, 89 L.Ed.2d 538 (1986); Federal Sav. and Loan Ins. v. Krajl, 968 F.2d 500, 503 (5th Cir. 1992). The facts are reviewed drawing all reasonable inferences in favor of the non-moving party. King v. Chide, 974 F.2d 653, 656 (5th Cir. 1992).

DISCUSSION

42 U.S.C. § 1981 provides:

(a) Statement of equal rights

> All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit

> of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes licenses, and exactions of every kind, and to no other.
>
> **(b) Definition**
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> For purposes of this section, the term "make and enforce contracts" includes the making, performance, modification, and termination of contracts, and the enjoyment of all benefits, privileges, terms, and conditions of the contractual relationship.
>
> **(c) Protection against impairment**
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> The rights protected by this section are protected against impairment by nongovernmental discrimination and impairment under color of State law.

42 U.S.C. § 1981 (1994 Supp.).

Given that many employment discrimination cases involve elusive factual questions, the Supreme Court has devised an evidentiary procedure that allocates the burden of production and establishes an orderly burden of proof. In a claim of race discrimination brought under § 1981, the evidentiary procedure to be utilized was originally introduced in McDonnell Douglas Corp. v. Green, 411 U.S. 792, 93 S. Ct. 1817, 36 L.Ed.2d 668 (1973), and recently reaffirmed in St. Mary's Honor Ctr. v. Hicks, 509 U.S. --, 113 S. Ct. 2742, 125 L.Ed.2d 407 (1993).[5] Under McDonnell Douglas,

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[5] McDonnell Douglas and St. Mary's are Title VII race discrimination cases. The same procedural roadmap applies to race discrimination cases brought under § 1981. See Carpenter v. Gulf State Manufacturers, Inc., 764 F. Supp. 427, 432 (N.D. Miss. 1991)(citing Patterson v. McLean Credit Union, 491 U.S. 164, 109 S. Ct. 2363, 105 L.Ed.2d 132, 157 (1989), rev'd on other grounds) (proving improper motive in § 1981 case involves same four-part standard); see also M. Player, Employment

the plaintiff has the initial burden of proving a prima facie case of discrimination. McDonnell Douglas, 411 U.S. at 802. If the plaintiff establishes a prima facie case, a presumption of discrimination arises and the burden of production shifts to the employer to "articulate some legitimate, nondiscriminatory reason for the discharge." Whiting v. Jackson State Univ., 616 F.2d 116, 121 (5th Cir. 1980). The employer need not prove the absence of a discriminatory motive. Id.

Once the employer articulates its nondiscriminatory reason, the burden is again on the plaintiff to prove that the articulated legitimate reason was a mere pretext for a discriminatory decision. Id. Ultimately, the burden of persuasion rests on the plaintiff, who must establish the statutory violation by a preponderance of the evidence. Id.(citing Jepsen v. Florida Board of Regents, 610 F.2d 1379, 1382 (5th Cir. 1980)). Even if the plaintiff succeeds in revealing the defendant's reasons for terminating him were false, he still bears the ultimate responsibility of proving the real reason was unlawful "intentional discrimination." See St. Mary's, 125 L.Ed.2d at 424 ("It is not enough to disbelieve the employer; the fact finder must believe the plaintiff's explanation of intentional discrimination."). With these principles in mind, the court now turns to the case at hand.

Discrimination Law §8.02(c) (1988)(explaining that courts have employed same four-part test in Title VII and § 1981 actions).

A. THE PRIMA FACIE CASE

When an employment discrimination claimant contends that he was discharged from employment because of race, a prima facie case of discrimination is made if it is shown that the person (1) belongs to the class of people protected by the statute; (2) was qualified for the job for which he was suspended or for which he sought a position; (3) was terminated or rejected for a position; and (4) after his termination or rejection, the employer hired a person not in plaintiff's protected class, or retained those having comparable or lesser qualifications. McDonnell Douglas, 411 U.S. at 802; see Carpenter, 764 F. Supp. at 432. This showing, however, is not the only way to establish a prima facie case of discriminatory discharge. Jones v. Western Geophysical Co., 669 F.2d 280, 284 (5th Cir. 1982).

If an employee is discharged under circumstances in which an employee of another race would not have been discharged, an inference of discrimination arises regardless of the race of the employee's replacement. Punitive action against employees for violating work rules must not differentiate on the basis of [race]. McDonald v. Santa Fe Trial Transportation Co., 427 U.S. 273, 282-83, 96 S. Ct. 2574, 2579-80, 49 L.Ed.2d 493 (1976).[6] In Brown v. A.J. Gerrard Mfg. Co., 643 F.2d 273, 276 (5th Cir. 1981), the Fifth

[6] Although McDonald involved a sex discrimination claim under Title VII, the same analysis is appropriate here.

Circuit set out a four part test for establishing a prima facie case for discriminatory discharge due to unequal imposition of discipline:

> (1) That plaintiff was a member of a protected group;
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> (2) That there was a company policy or practice concerning the activity for which he or she was discharged;
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> (3) That non-minority employees either were given the benefit of a lenient company practice or were not held to compliance with strict company policy; and
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> (4) That the minority employee was disciplined either without the application of a lenient policy, or in conformity with the strict one.

Id. at 276; See E.E.O.C v. Brown & Root, Inc., 688 F.2d 338, 340-41 (5th Cir. 1982).

Thornborough v. Columbus and Greenville R. Co., 760 F.2d 633 (5th Cir. 1985),[7] is particularly helpful because it explains the shifting roles discussed above in the context of an employer's motion for summary judgment. At the summary judgment stage, the plaintiff need not present a prima facie case of discrimination, but must simply raise a genuine issue of material fact as to the existence of a prima facie case. Thornborough, 760 F.2d at 641 n. 8.

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[7] Although Thornbrough addressed allegations of age discrimination, case law under the Age Discrimination and Employment Act has consistently been applied in other types of discrimination cases. See Williams v. Southwestern Bell Telephone Co., 718 F.2d 715, 718 (5th Cir. 1981).

In support of his position that there remains a "genuine issue of material fact" as to proof of a prima facie case, the plaintiff offered evidence of Blue Mountain's alleged failure to discharge Thomas Towery, who is white, for conduct similar to that of plaintiff's verbal abuse of a fellow employee. The plaintiff alleges that Towery had continually called and harassed another employee, Tammy Goolsby. The plaintiff claims that on one instance Towery approached Goolsby and put his arm around her while she was on the working line. Goolsby was admittedly afraid of Towery because of his actions. Duncan, after discussing the matter with team leader Lonnie Spellins, demoted Towery for his actions. Duncan, in his deposition, characterized Towery's treatment of Goolsby as sexual harassment, and admitted that he believed that this type of harassment, depending on the circumstances, was no less serious than verbal abuse. Blue Mountain contends that the demotion of Towery for his actions is in no way analogous to the discharge of the plaintiff. Specifically, the defendant claims that evidence of unequal treatment of an employee who violated a different Blue Mountain policy does not support the plaintiff's contention of unequal treatment in similar circumstances.

The defendant also introduced evidence that indicates that it previously discharged several persons for verbal abuse of a fellow employee. The defendant submits that Rita Rutherford, Willie Rutherford, and Arthur Vance, were all terminated for verbally

abusing other employees.[8] Blue Mountain provided the court with copies of termination letters used in discharging the aforementioned employees. The letters support defendant's contentions that these employees were discharged for verbal abuse of fellow employees under apparently similar circumstances as the plaintiff. However, the court cannot make a determination as to the circumstances surrounding these dismissals from the record before it, and is, therefore, unwilling to summarily dismiss this complaint on the basis that other employees were disciplined under similar circumstances in precisely the same manner as the plaintiff.

The plaintiff provided the court with an explanation of Rita Rutherford's discharge in an attempt to distinguish it from his own termination. Interestingly enough, Rutherford was discharged for verbally abusing plaintiff Weston. In any event, the plaintiff submits that Rutherford was a temporary employee who had only been with the company approximately two months before her termination and that her abuse was unprovoked. Because of Weston's time with the company and his allegedly provoked, justifiable verbal abuse of Prince, he argues that his situation is clearly distinguishable.

The court does not find that Blue Mountain's demotion of Towery for alleged sexual harassment shows unequal treatment under

[8] Rita Rutherford was apparently the only white person allegedly discharged for verbal abuse.

apparently similar circumstances; however, the court is of the opinion that the plaintiff has provided enough evidence to create a question of fact on this issue. Additionally, the court does not necessarily agree that plaintiff's discharge is distinguishable from the discharge of Rutherford, but does find that questions of fact exist which preclude summary judgment at this stage of litigation. The court is of the opinion that Weston has provided enough evidence as to Blue Mountain's unequal discipline to create a genuine issue of material fact as to the existence of plaintiff's prima facie case.

B. PROOF OF PRETEXT FOR DISCRIMINATION

As noted in the factual summary of this opinion, Blue Mountain has set forth what it believes to be a legitimate, nondiscriminatory reason for its decision. Blue Mountain claims to have reached its decision based on plaintiff's verbal abuse of a fellow employee. The employer, having articulated a race neutral reason for the plaintiff's termination, the burden shifts to the plaintiff to prove that the proffered reason was false and that the real reason for the ultimate discharge was motivated by racial animus. St. Mary's, 125 L.Ed.2d at 418. In order to do so, the plaintiff must "prove by a preponderance of the evidence that the legitimate reasons offered by the defendant were not its true reasons, but were a pretext for discrimination." Texas Dept. of Community Affairs v. Burdine, 450 U.S. 248, 253, 101 S. Ct. 1089,

67 L.Ed.2d 207 (1981). This court is mindful of the United States Supreme Court's recent pronouncement that "a reason cannot be proved to be a pretext for discrimination unless it is shown both that the reason was false, and that discrimination was the real reason." St. Mary's, 125 L.Ed.2d at 422.

In the case at bar, the plaintiff has offered somewhat minimal evidence to suggest that the reasons given by the defendant were false and the true reason was motivated by an unlawful race based decision by management. The plaintiff simply argues that the evidence indicating that he was discharged and that a person who did not belong to a minority was retained under apparently similar circumstances provides this court with enough evidence to find that a genuine issue of material fact exists as to the plaintiff's claims for race discrimination. The court is of the opinion that the evidence submitted, although limited, is enough to overcome the present motion. The court recognizes that summary judgment is ordinarily "an inappropriate tool for resolving claims of employment discrimination, which involve nebulous questions of motivation and intent..." Id. at 640; see Hayden v. First National Bank, 595 F.2d 994, 997 (5th Cir. 1979)(discussing that granting summary judgment in employment discrimination cases is especially questionable). Often, motivation and intent can only be proved through circumstantial evidence; determinations regarding motivation and intent depend on complicated inferences from the

evidence and are therefore peculiarly within the province of the factfinder. Thornborough, 760 F.2d at 641. Again, in the context of summary judgment proceeding, the question is not whether the plaintiff proves a pretextual reason for discharge, but rather whether the plaintiff raises a genuine issue of fact regarding such pretext. Here, the plaintiff has done so. Accordingly, the defendant's motion for summary judgment will be denied.

CONCLUSION

Because the court is of the opinion that genuine issues of material fact exist on the plaintiff's claim of race discrimination in violation of 42 U.S.C. § 1981, the defendant's motion for summary judgment will be denied.

An order in accordance with this memorandum opinion shall issue this day.

THIS ____ day of October, 1994.

United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
WESTERN DIVISION

HENRY J. WESTON,

Plaintiff

v. **Civil Action No. 3:93CV14-D-O**

BLUE MOUNTAIN PRODUCTION COMPANY

Defendant

ORDER DENYING MOTION FOR SUMMARY JUDGMENT

Pursuant to a memorandum opinion issued this day, it is hereby **ORDERED** that:

1) defendant Blue Mountain Production Company's motion for summary judgment on the plaintiff Henry J. Weston's, claim for race discrimination in violation of 42 U.S.C. § 1981 be, and it is hereby, **DENIED.**

All memoranda, depositions, affidavits, and exhibits considered by the court in ruling on the present motion for summary judgment are hereby incorporated into and made a part of the record in this cause.

ORDERED this ____ day of October, 1994.

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United States District Judge